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10/690,085

10/20/2003

Lee S. Weinblatt

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EXAMINER

DEAN, RAYMOND S

ART UNIT

PAPER NUMBER

2618

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/690,085 | <b>Applicant(s)</b><br>WEINBLATT ET AL. |  |
|                              | <b>Examiner</b><br>RAYMOND S. DEAN   | <b>Art Unit</b><br>2618                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

The portable personal data meters in Kiefl being near the receiver and having the capability of being carried or worn by the user renders a scenario wherein the personal data meter is carried or worn by the user while said user is near the receiver thus rendering a scenario wherein the personal data meter is worn or carried by the user during the broadcast program to detect a code signal.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefl (5,382,970) in view of Weinblatt (5,630,203) and in further view of Schroeder et al. (US 6,463,271).

Regarding Claim 1, Kiefl teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract,

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Col. 5 lines 37 – 41) including: wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41), and means for storing the detected code signal (Col. 6 lines 38 - 41); means for outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted); and communication means for transmitting the outputted detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8), wherein the portable audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal (Cols. 2 lines 35 – 45, 3 lines 22 – 26, 5 lines 60 – 65, 6 lines 38 – 41, See also Response To Arguments set forth above).

Kiefl does not teach means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and wherein said communication means communicates with Cellular Digital Packet Data (CDPD).

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Schroeder, which, like Kiefl, teaches a cellular phone that transmits data via wireless means, teaches a wireless phone that has CDPD capability (Col. 7 lines 46 – 63).

Kiefl in view of Weinblatt and Schroeder teach a cellular phone that transmits data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the CDPD capability of Schroeder as an alternative means of achieving the same predictable result of transmitting data via wireless means.

Regarding Claim 2, Kiefl teaches a method for monitoring an audience member tuned to a program within a broadcast signal comprising: providing a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41); wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41); storing the detected code signal in said portable audience monitoring unit (Col. 6 lines 38 - 41); outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted), and transmitting the outputted

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detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8), wherein said detecting step is performed while said portable audience monitoring unit is worn by the audience member during the broadcast program (Cols. 2 lines 35 – 45, 3 lines 22 – 26, 5 lines 60 – 65, 6 lines 38 – 41, See also Response To Arguments set forth above).

Kiefl does not teach detecting with said portable audience monitoring unit a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and wherein said communication means communicates with Cellular Digital Packet Data (CDPD).

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

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Schroeder, which, like Kiefl, teaches a cellular phone that transmits data via wireless means, teaches a wireless phone that has CDPD capability (Col. 7 lines 46 – 63).

Kiefl in view of Weinblatt and Schroeder teach a cellular phone that transmits data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the CDPD capability of Schroeder as an alternative means of achieving the same predictable result of transmitting data via wireless means.

4. Claims 3 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefl (5,382,970) in view of Weinblatt (5,630,203) and in further view of Hansen et al. (US 6,173,158).

Regarding Claim 3, Kiefl teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41) including: wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41), and means for storing the detected code signal (Col. 6 lines 38 - 41); means for outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted); and communication means for transmitting the outputted detected code signal to a central processing station (Cols. 6

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lines 64 – 68, 7 lines 1 – 8), wherein the portable audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal (Cols. 2 lines 35 – 45, 3 lines 22 – 26, 5 lines 60 – 65, 6 lines 38 – 41, See also Response To Arguments set forth above).

Kiefl does not teach means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and wherein said communication means communicates with a ReFLEX protocol.

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Hansen, which, like Kiefl teaches in the wireless data communication field of endeavor, teaches a pager that uses the ReFLEX protocol (Col. 4 lines 51 – 53).



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Kiefl in view of Weinblatt and Hansen teach portable wireless devices that transmit data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the ReFLEX capability of Hansen as an alternative means of achieving the same predictable result of transmitting data via wireless means.

Regarding Claim 4, Kiefl teaches a method for monitoring an audience member tuned to a program within a broadcast signal comprising: providing a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41); wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41); storing the detected code signal in said portable audience monitoring unit (Col. 6 lines 38 - 41); outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted), and transmitting the outputted detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8), wherein said detecting step is performed while said portable audience monitoring unit is worn by the audience member during the broadcast program (Cols. 2 lines 35 – 45, 3 lines 22 – 26, 5 lines 60 – 65, 6 lines 38 – 41, See also Response To Arguments set forth above).

Kiefl does not teach detecting with said portable audience monitoring unit a code signal that forms the broadcast signal in combination with a programming signal used to

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perform the program and wherein said communication means communicates with a ReFLEX protocol.

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Hansen, which, like Kiefl teaches in the wireless data communication field of endeavor, teaches a pager that uses the ReFLEX protocol (Col. 4 lines 51 – 53).

Kiefl in view of Weinblatt and Hansen teach portable wireless devices that transmit data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the ReFLEX capability of Hansen as an alternative means of achieving the same predictable result of transmitting data via wireless means.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAYMOND S. DEAN whose telephone number is (571)272-7877. The examiner can normally be reached on Monday-Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward F. Urban can be reached on 571-272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond S Dean/  
Examiner, Art Unit 2618  
Raymond S. Dean  
July 27, 2010